

**ENVIRONMENTAL PROTECTION COMMISSION  
MEETING MINUTES  
JANUARY 18, 2006**

<u>Wednesday, January 18, 2006</u>	<u>7:30 P.M.</u>	<u>Room 206 Town Hall</u>
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COMMISSION MEMBERS PRESENT: Chairman Peter Hillman, Reese Hutchinson, Pete Kenyon, Ned Lewis, and Craig Flaherty. Susan Cameron joined the meeting at 8:40 P.M.

STAFF PRESENT: Director of Planning, Jeremy Ginsberg, Assistant Director, David Keating

COURT RECORDER: Syat

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**GENERAL MEETING**

Mr. Hillman called the meeting to order.

**Discussion and possible decision by the EPC members** about the Referral from the Planning and Zoning Commission about the proposed Nearwater Manor at 77 Nearwater Lane and discussion/decision about the possible jurisdiction of the Environmental Protection Commission with respect to this project

A revised draft resolution was distributed, reviewed, and commented upon by EPC members. Various comments and corrections were made. It was noted that the “regular criteria” that EPC usually considers such as “is there impact to the wetlands” and “are there feasible and prudent alternatives” are not the standard in this case.

A motion was then made by Mr. Hillman, seconded by Mr. Lewis to adopt the decision as modified by EPC members this evening to assert jurisdiction over the Nearwater Manor proposal. That motion passed by a vote of 5-0, with Ms. Kirby abstaining, as she did not attend all of the public hearings on this matter. Mr. Hillman then briefly summarized and gave a condensed version of the decision for the general public. The decision read as follows:

**DECISION OF THE  
DARIEN ENVIRONMENTAL PROTECTION COMMISSION  
REGARDING EPC JURISDICTION AND REFERRAL COMMENTS OF  
STEFANONI PROPERTY, 77 NEARWATER LANE  
JANUARY 18, 2006**

**Background and Issues**

This matter comes before the Darien Environmental Protection Commission (“EPC”) by virtue of a referral from the Planning and Zoning Commission (“P&Z”). The basic questions are:

- I) whether the Stefanonis’ project constitutes a “Regulated Activity”, falling within the jurisdiction of, and needing a permit from, the EPC; and
- II) does the EPC have any comments or response to the P&Z referral submitted to them in late 2005.

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**Project Description**

The Stefanonis have submitted an application to the P&Z to raze the existing one-story single-family residence at their 1.05 acre 77 Nearwater Lane property, and to construct two new buildings with associated parking and regrading, and to perform related site development activities. The P&Z submitted a referral request to the EPC on that application. During the EPC public hearings on this matter, revised plans were submitted reflecting, among other things, the removal of a proposed retaining wall near the south property line with fill behind it.

**Public Hearing Process in this Matter**

On the question of jurisdiction, the EPC held public hearings on December 14, 2005 and January 4, 2006 and January 11, 2006. During the EPC's hearings, the interveners and the Stefanonis, and their representatives, presented information and provided answers to concerns and questions raised by the Commission and Commission staff. The Commission heard testimony from a number of experts including: Barry Hammons, Joseph Risoli, William Kenny, Michael Aurelia, and James MacBroom.

The Stefanonis, as well as representatives of the neighbors, provided substantial materials to the EPC as part of the record in this matter. These materials, presented, reviewed and discussed during the three evenings of public hearings totaling approximately nine hours, are numerous. It is important to note that EPC reviewed a number of documents and plans, including but not limited to the following:

1. Letter dated December 20, 2005 from Sandra L. Rearden to Darien News-Review with Legal Notice attached.
2. Legal Notices and various letters to the local newspapers regarding publishing of said Legal Notices.
3. May 15, 2000 report from Thomas Pietras (5 pages total).
4. March 1, 2002 letter from Thomas Pietras, with portions highlighted (2 pages total).
5. April 10, 2002 letter from Nancy Sarner to Christopher & Margaret Stefanoni.
6. October 6, 2003 letter from Nancy Sarner to Christopher & Margaret Stefanoni.
7. November 16, 2004 letter from Nancy Sarner to Christopher & Margaret Stefanoni.
8. Letter dated November 21, 2005 from Wilder G. Gleason to Environmental Protection Commission with attached signed petition.
9. November 28, 2005 Petition for Intervention Under CGS Section 22a-19(a), Wilder Baker (with attachments).
10. Exhibits to Robinson & Cole Letter of November 28, 2005, Re: EPC Review (10 Tabs).

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11. November 28, 2005 letter from Edward O'Hanlon to Patrick Damanti re: Request for Environmental Protection Commission Review (11 pages total).
12. Letter dated November 29, 2005 from Edward O'Hanlon to Patrick Damanti re: Coastal Area Management Act Analysis (10 pages) with Tab A (November 28, 2005 Michael Aurelia memorandum) and Tab B (DeSanto report dated November 27, 2005).
13. November 29, 2005 Petition for Intervention Under CGS Section 22a-19(a), Land Trust of Darien.
14. Copy of December 1, 2005 Darien Times Letter to the Editor with typewritten comment.
15. December 6, 2005 report from Michael Aurelia of the Applied Ecology Research Institute (5 pages total).
16. December 6, 2005 Petition for Intervention Under CGS Section 22a-19(a), Richard Breeden.
17. Letter dated December 7, 2005 from James Murphy to James MacBroom (5 pages total).
18. Nearwater Manor, PZC Public Hearing, Unresolved Questions & Issues (2 pages).
19. Letter dated December 9, 2005 from Wilder G. Gleason to Environmental Protection Commission.
20. Letter dated December 9, 2005 from Edward O'Hanlon to Jeremy Ginsberg re: EPC Jurisdiction (4 pages).
21. Letter dated December 13, 2005 from Wilder Gleason to Peter Hillman (2 pages).
22. Letter dated December 13, 2005 from William L. Kenny to John Anderson (5 pages).
23. Pages 5 and 6 of the Darien Inland Wetlands and Watercourses Regulations with portions highlighted (*Submitted at EPC Public Hearing 12-14-2005*).
24. Wetland & Watercourse Map, Darien Land Trust, dated December 13, 2005 by William L. Kenny.
25. Christopher Stefanoni et al v. Ian M. Duncan
26. Question of Jurisdiction of the Environmental Protection Commission, 20 tabs, submitted at EPC Public Hearing 12-14-2005.
27. Letter dated December 14, 2005 from James G. MacBroom, PE to James Murphy, Esq. (*Submitted at EPC Public Hearing 12-14-2005*).
28. Letter dated December 14, 2005 from James D'Alton Murphy, Esq., to Peter N. Hillman and Members of the Environmental Protection Commission (11 pages with attachments) (*Submitted at EPC Public Hearing 12-14-2005*).

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29. Site: Nearwater Lane #35 & 47, with highlighting, Created by Darien GIS (*Submitted at EPC Public Hearing 12-14-2005*).
30. Deeds and Maps regarding Darien Land Trust property (*Submitted at EPC Public Hearing 12-14-2005*).
31. December 14, 2005 EPC Agenda.
32. Letter dated December 22, 2005 from James D'Alton Murphy to James G. MacBroom, P.E. re: 77 Nearwater Lane, Darien (2 pages).
33. Memorandum dated January 4, 2006 from Edward V. O'Hanlan, Esq. and others to Peter Hillman and others (4 tabs).
34. Letter dated January 4, 2006 from James G. MacBroom, P.E. to James Murphy, Esq. re: 77 Nearwater Lane, Darien, CT, MMI #2901-01-1 (5 pages).
35. Question of Jurisdiction of the Environmental Protection Commission Public Hearing #2: January 4, 2006 (tabs A-I).
36. C.V. James G. MacBroom, P.E. Vice President, Water Resource and Environmental Engineering (3 Pages).
37. C.V. William A. Root, M.S. Senior Environmental Scientist (3 pages).
38. Darien Land Trust Preservation Guidelines—with portions highlighted (2 pages).
39. Properties of the Darien Land Trust (4 pages).
40. Mission of the Darien Land Trust.
41. Letter dated December 13, 2005 from Wilder Gleason to Peter Hillman.
42. E-mail dated January 10, 2006 from Peter Hillman.
43. Letter dated December 13, 2005 from Mark S. Davis of Tighe & Bond regarding Site Plan and Traffic Review (*Submitted at EPC Public Hearing 1-11-2006*).
44. Resume Michael Aurelia (4 pages) (*Submitted at EPC Public Hearing 1-11-2006*).
45. Center for Watershed Protection web page and 10 pages of attachments (*Submitted at EPC Public Hearing 1-11-2006*).
46. Air Photo with highlighting (*Submitted at EPC Public Hearing 1-11-2006*).
47. List of Impaired Waters (5 pages total)

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48. Listed Water Information

49. Map entitled, "Estimated Percent Imperviousness by Local Watershed" (*Submitted at EPC Public Hearing 1-11-2006*).
50. Impervious Surface Cover—What does it Mean? With Map entitled, "Estimated Percent Imperviousness by Local Watershed" attached (*Submitted at EPC Public Hearing 1-11-2006*).
51. Surface and Groundwater Contamination Associated with Traffic Generated Pollution by Robert S. De Santo, PhD dated December 1, 2005 (*Submitted at EPC Public Hearing 1-11-2006*).
52. Memorandum dated January 9, 2006 from Jeremy Ginsberg and David Keating to Peter Hillman and the Environmental Protection Commission (6 pages total).
53. Memorandum dated January 9, 2006 to Environmental Protection Commission from Wilder Gleason (3 pages with attachments).
54. Memorandum dated January 11, 2006 to Environmental Protection Commission from Wilder Gleason with various attachments (*Submitted at EPC Public Hearing 1-11-2006*).
55. Question of Jurisdiction of the Environmental Protection Commission Public Hearing #3: January 11, 2006 (with attachments i-viii).
56. Prestige Builders LLC v Inland Wetlands Commission of the City of Ansonia et al. (*Submitted at EPC Public Hearing 1-11-2006*).
57. Purposes of the Tidal Wetlands and Inland Wetlands and Watercourses Act with three 8 ½" x 11" photos attached (*Submitted at EPC Public Hearing 1-11-2006*).
58. Real Estate Impact Study by Kerin & Fazio LLC (*Submitted at EPC Public Hearing 1-11-2006*).
59. Letter dated December 9, 2005 from Joe Canas of Tighe & Bond (11 pages). (*Submitted at EPC Public Hearing 1-11-2006*).
60. Four 8 ½" x 11" color photographs.
61. 58 Sunswyck Rd (EPC 49-2005): Map with portions highlighted; Letter dated June 23, 2005 from Wilder Gleason to Ms. Maguerite Singer Smith with portions highlighted; Memorandum dated January 9, 2006 from Wilder G. Gleason to Darien Environmental Protection Commission with portions highlighted; Portion of Page 10 of the July 6, 2005 EPC meeting minutes with portions highlighted.
62. 90 Inwood Road (EPC 35-2002): Map with portions highlighted; one page of application materials with portions highlighted.

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- 63. 43 Stony Brook (EPC 64-2001): Map with portions highlighted; one page of application materials with portions highlighted; Portion of page 14 of the July 18, 2001 EPC meeting minutes with portions highlighted.
- 64. 30 St. Nicholas Rd (EPC 20-2001): Map with portions highlighted; Portion of Page 1 of the April 4, 2001 EPC meeting minutes with portions highlighted.
- 65. 26 Greenleaf Ave (EPC 43-2000): Map with portions highlighted; Portion of Page 2 of the September 6, 2000 EPC meeting minutes with portions highlighted; Soil Investigation Report by Otto Theall dated August 21, 2000.

MAPS, PLANS AND PHOTO EXHIBITS

- 66. Plan entitled, “Proposed Grading and Utility Plan” prepared for Nearwater Manor, #77 Nearwater Lane, September 23, 2005, Sheet 3 of 5, last revised December 12, 2005.
- 67. Proposed Grading and Utility Plan prepared for Nearwater Manor #77 Nearwater Lane, by Hammons LLC, dated 8/9/2005 (with retaining wall and as originally submitted to the Planning and Zoning Commission and referred to the EPC by the Planning and Zoning Commission).
- 68. Plan entitled, “Proposed Grading and Utility Plan” prepared for Nearwater Manor, #77 Nearwater Lane, September 23, 2005, Sheet 3 of 5, (to delete the retaining wall and regrading south of the larger building—Building A) last revised January 9, 2005 (with portions highlighted).
- 69. Plan entitled, “Schematic Proposed Drainage System”, by Joseph Risoli PE, dated November 23, 2005.
- 70. Plan entitled, “Hydrological Study Map”, prepared for the Darien Land Trust, by Joseph Risoli PE, last revised 12/9/2005.
- 71. Plan entitled, “Hydrological Study Map”, prepared for the Darien Land Trust, by Joseph Risoli PE, last revised 12/12/2005.
- 72. “Pictures” prepared for Darien Land Trust, Nearwater Lane, January 4, 2006, Sheet 1 of 1 (10 photos)
- 73. Nearwater Manor 77 Nearwater Lane by Stein Troost architecture—elevations and floor plans—13 pages total (*Submitted at EPC Public Hearing 1-11-2006*).
- 74. Plan entitled, “Soil Erosion and Sediment Control Plan” prepared for Nearwater Manor, #77 Nearwater Lane, September 23, 2005, Sheet 4 of 5, last revised January 9, 2006 (on three pages total with portions highlighted).
- 75. Plan entitled, “Soil Erosion and Sediment Control Plan” prepared for Nearwater Manor, #77 Nearwater Lane, September 23, 2005, Sheet 4 of 5, last revised January 9, 2006 (with portions highlighted).

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76. Nearwater Manor 77 Nearwater Lane by Stein Troost architecture dated 9.23.05 last revised 10.26.05 (*Submitted at EPC Public Hearing 1-11-2006*).

77. Schematic Sections prepared for Robinson and Cole last revised 01/11/06.

Following careful review of the submitted materials and related analysis, the five participating members of the Commission<sup>1</sup>, all of whom are familiar with the site and its surroundings, unanimously find:

**History regarding prior information**

Based upon prior staff correspondence, the Stefanonis did not believe that EPC jurisdiction was implicated. The Commission concluded, however, that such prior correspondence was not dispositive. There were three letters written by EPC Staff regarding the subject property: the Nancy Sarner letter of April 10, 2002; the Nancy Sarner letter of October 6, 2003; and the Nancy Sarner letter of November 16, 2004. The EPC previously dealt with an application regarding the subject property and had determined, back in 2000, that there was some inland wetland area to the south of the site and that the 50 foot regulated area extended into the property at 77 Nearwater Lane. In 2002, the property owners submitted additional information from Soil Scientist Thomas Pietras to indicate that the wetlands to the south of the property were tidal wetlands. Based upon that information, the EPC ruled that it did not have jurisdiction because tidal wetlands are exclusively regulated by the State of Connecticut and not by the local inland wetlands agency. The 2002 letter sets forth that finding and the 2003 and 2004 letters confirm that ruling. No activity was proposed at the time and the analysis utilized the best information then available and was based solely on the dimensional criteria for jurisdiction. None of those three letters dealt with a requested activity as noted herein. Also, none of those letters were written after receiving the new, expert testimony from engineers, soil scientists, and surveyors which have been submitted for the record in this matter. The conclusion in 2002 was that the land is not within a regulated area. The 2003 letter confirmed that earlier letter, but carried the important caveat that "...[the] Commission did not discuss nor waive the 100' regulated area from Holly Pond established under the Regulations." The question now is whether the proposed development project on that land is a regulated activity. Petitions for Intervention and Petitions signed by the general public requested that the EPC assert jurisdiction over the project and purported to have information that is pertinent. At the December 14, 2005 Public Hearing, EPC Chairman Hillman said that based on the previous determination by the Commission, the burden is on the interveners and the petitioners to come forward with evidence showing why they think the subject project is within the jurisdiction of the EPC. He also explained that the EPC would make the decision about jurisdiction and has hired a professional engineer, James MacBroom, to help it assess this situation.

**Is there Regulated Activity under the Darien Inland Wetland and Watercourses Regulations?**

In short, the Commission finds that there is proposed activity which could, or is likely to affect the wetlands and/or watercourse, particularly during the construction and development phase, and is therefore a regulated activity that requires a permit from the EPC before this project can proceed.

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<sup>1</sup> One Commissioner recused herself; another was unable to attend all of the public hearings.

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Although the revised plans show the proposed site alterations to be outside of the dimensional criteria (within 50 feet of an inland wetland or within 100 feet of Holly Pond) that would automatically require a permit, due to the scope of the disturbance involved and the proximity to the regulated areas and the wetlands and watercourse, a permit from the EPC is required. EPC also concludes it is more probable than not that the construction and earth moving activities will be conducted within the regulated area around the wetland; and that said activity even if removed from the dimensionally regulated area, may likely affect such sensitive area.

In order to resolve the question of jurisdiction, two Sections of the Town of Darien Inland Wetlands and Watercourses Regulations (the "Regulations") were reviewed and analyzed. Section 6.1 reads as follows:

*6.1 No person shall conduct or maintain a Regulated Activity without first obtaining a permit for such activity from the Inland Wetlands Agency of the Town of Darien.*

The only question is what is a "Regulated Activity?" That is answered by reviewing Section 2.1y of the Regulations, which reads as follows:

*2.1 y "Regulated Activity" means any operation within or use of a wetland or watercourse (or activity removed from a wetland or watercourse which affects a wetland or watercourse) involving removal or deposition of material; or any obstruction, construction, alteration or pollution, of such wetlands or watercourses, but shall not include the specified activities in Section 4 of these regulations. In addition to the above, regulated activities shall include:*

- 1. grading, filling, excavation, or any other earth-disturbing activities; or removal or deposition of any material; or removal of any existing vegetation within fifty (50) feet of wetlands or watercourses.*
- 2. obstructions, whether man-made or natural, of wetlands or watercourses.*
- 3. the location of any portion of any subsurface waste disposal system, including any earth-disturbing activities reasonably associated herewith, within 200 feet of Holly Pond or Gorham's Pond, or the mean high water line of the Noroton, Five Mile, or Goodwives River; within 150 feet of the mean water line of other watercourses; and within 50 feet of wetlands.*
- 4. the location of any portion of any structure including any earth-disturbing activities reasonably associated herewith, within 100 feet of Holly Pond or Gorham's Pond, or the mean high water line of the Noroton, Five Mile, or Goodwives River; within 50 feet of all other watercourses or wetlands.*

Each part of this definition is reviewed and analyzed below.



**Issues Relative to Section 2.1.y (first paragraph)**

Under Section 2.1.y (“...activity removed from a wetland or watercourse which affects a wetland or watercourse...”):<sup>2</sup>

- A. *During the construction phase, will the development have surface drainage flow southward toward the wetland and will it affect the wetland?*

The Commission finds that, based on the topography of the site as illustrated on the submitted maps and plans, during the construction process, much, if not all of the natural and polluted storm water runoff will continue to flow in a southerly direction toward the inland wetlands, tidal wetlands, and Holly Pond. When the storm drainage system is completed per the submitted plans, then the runoff water would be directed through the system, and the overflow would be connected to the Town drainage pipe in Nearwater Lane to the east. Until the completion of the storm drainage system and until the water is directed into that system, the overland flow will continue in a southerly direction toward the wetlands. Based on the magnitude of the project and the amount of developed area and the limited work space on the site outside of the 50 regulated area, it is likely that the construction phase runoff will affect the wetlands and watercourse. At the January 11, 2006 public hearing, Mr. Hammons said that the construction phase could be 9 months or longer and that provisions could be made to temporarily divert the southerly flow of water from the disturbed construction site, but no such plans are shown on any of the materials submitted to the EPC. The only sediment and erosion control plan from the Stefanonis is in conjunction with the 8/9/2005 plans that still show the retaining wall and regrading within 50 feet of the wetlands. The revised grading and utility plans purporting to eliminate the work from within 50 feet of the wetlands were not accompanied by sediment and erosion control plans or water diversion plans to show how runoff would be managed during the construction phase of the project. Construction of the building would be very close to the regulated area and all equipment and construction activity would be directly uphill of the regulated area and the wetland. One portion of a plan submitted to the EPC by an opponent of the project, shows a double row of silt fence in close proximity to the boundary of the regulated area. Mr. Hammons said that the silt fences would be spaced three feet apart, but the drawing scales at considerably less. The silt fences would be the only protection of the regulated area and the wetlands, and the silt fences would be only 4 feet from the proposed 3 plus story building. In the Commission’s experience, the silt fences are likely to be moved, damaged, removed or otherwise compromised during the earth moving and construction phase without further measures and assurances, such actions may well result in deleterious effects upon the wetlands and/or Holly Pond.

- B. *Will the developed property have surface drainage flow southward toward the wetland and will it affect the wetland?*

The Commission finds that it is likely that there would still be some surface flow of water from the developed site toward the wetlands to the south. Much, if not all of the flow from the roofs, parking area, and some of the walkways would be redirected to the east, but runoff from the lawn and walkway areas south of the building and parking lot would still flow southerly. Testimony to date showing the band or “finger” of inland wetlands to be 10 square feet may eventually lead to a finding that any impact thereon is insignificant. More detailed information about this overland flow, however, is needed to properly evaluate the situation.

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<sup>2</sup> While not meant to be an all-inclusive list of questions, the EPC found it helpful to address the following inquiries.

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*C. Is Holly Pond a tidal wetland or an inland watercourse?*

The Commission finds that Holly Pond is a watercourse which is tidally influenced. More specifically, testimony shows Holly Pond to be a tidally influenced brackish water pond. It is a distinct water body that permanently inundates approximately 250 acres. It is an estuary that links the Noroton River with Long Island Sound. The US EPA in 2002 designated Holly Pond as impaired waters, with bacteria and pathogens impairments. Yet, as the testimony of Michael Aurelia demonstrated, the Darien Land Trust's salt marsh cove complex provides significant ecological benefits, and is the largest and most viable of the three remaining similar habitats in Holly Pond. The adjoining ecologically sensitive property owned by the Darien Land Trust (DLT) is dedicated as open space and for the preservation of wetlands and wetland wildlife and plants. The DLT property, as well as an easement, are on the fringe of Holly Pond. The current application, however, was not initially formally presented to the EPC in light of past correspondence by EPC from which the Stefanonis reasonably and in good faith could have concluded that EPC jurisdiction was not implicated. The Commission agrees with James MacBroom that Holly Pond is not a tidal wetland, as it does not contain the required tidal vegetation. The Commission does have regulatory jurisdiction over Holly Pond and activities that affect the Pond.

*D. Will drainage from the development phase of the project affect Holly Pond or the adjacent wetlands?*

As noted above, during the development or construction phase of the project, much of the site will be disturbed and it is possible, even likely, that the storm water runoff during the construction process will flow southerly toward Holly Pond and could affect the pond. At this point, the EPC cannot firmly determine whether the stormwater will adversely affect Holly Pond or the adjacent wetlands. The EPC will need to make a determination on this as part of processing a formal application for a permit.

*E. Will outflow of stormwater that has passed through the proposed drainage system affect Holly Pond or the adjacent wetlands?*

The drainage water will reach Holly Pond and could affect Holly Pond and/or the adjacent wetlands. At this point, the EPC cannot firmly determine the extent to which the stormwater from the completed project may negatively affect Holly Pond or the adjacent wetlands. The EPC would make a determination on this once a formal application has been submitted and processed.

**Issues Relative to Section 2.1.y.1**

Under 2.1.y.1 ("*...within fifty (50) feet of wetlands or watercourses*"):

*A. Where is the edge of inland wetlands south of the subject property ("Point A")?*

The Commission agrees with the expert testimony of soil scientist William Kenny, who mapped tidal wetlands and inland wetlands south of the Stefanoni property in December 2005. The Stefanonis accepted Mr. Kenny's mappings (but not all of his characterizations). James MacBroom, the independent engineer hired by the Commission to analyze complicated information and to advise the Commission, confirms the presence of inland wetlands on the northern end of the tidal wetlands. The inland wetlands are within 50 feet of the Stefanoni property and the original plan included the retaining wall and filling/regrading within that 50 foot regulated area.

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The EPC carefully considered all of the submitted information about the distinction between tidal wetlands and inland wetlands, both as defined by the State Statutes. The Commission finds that local extreme high water, one of the criteria for defining tidal wetlands, is as calculated and measured by Mr. MacBroom, at elevation 6.2' NGVD. That is the most thoroughly researched, most precise, and quantitative information provided to the Commission to establish the local extreme high water. The information about higher water submitted by the Stefanonis in the form of photographs and anecdotal personal observations is not conclusive as to whether it satisfies the criteria of the Connecticut Department of Environmental Protection.

*B. Where is the edge of grading, filling, excavation, or any other earth-disturbing activities; or removal or deposition of any material; or removal of any existing vegetation ("Point B")?*

The revised plans submitted by the Stefanonis, as noted above, remove all filling and regrading and construction of a retaining wall south of one of the proposed buildings. The revised plan shows the edge of the building approximately 57 feet from the inland wetlands. Mr. Hammons noted that a double row of silt fence (set 3 feet apart) is proposed south of the building. This leaves only an approximate 4 foot wide area on the south side of the proposed 3 plus story building. Within that approximate 4 foot wide area, earth removal for foundation, pouring of concrete for footings and foundations, backfilling operations, and construction of the walls and roof, must take place all without disturbing the silt fences that are to be installed to protect the wetlands and watercourse from the proposed activity. The Commission finds that the applicant has proposed, on paper, that all grading, filling, excavation, or any other earth-disturbing activities; or removal or deposition of any material; or removal of any existing vegetation would be more than 50 feet away from the wetlands. However, the Commission questions whether it is feasible to construct all of the proposed large buildings, parking area, drainage systems, and other site development activities within the confines as delineated by the silt fences. It is highly likely that the activities associated with the construction project will be conducted within the regulated area around the wetlands. Furthermore, our jurisdiction is plainly invoked by the language of our Regulations at 2.1.y, giving us authority to regulate activity "removed from" or outside a fifty foot (or one-hundred foot) area that may nonetheless affect such area.

*C. Are Point A and Point B within 50 feet?*

Based upon the simple scaling of Mr. Risoli's drawings and not analyzing the practical aspects of construction of this type and magnitude, the building would be more than 50 feet from the wetlands; however, during the public hearing, the Commission expressed concerns that the disturbance and work would not be properly confined and that disturbance and related construction activities would take place within the regulated areas. Moreover, the same upland review language of our Regulations at 2.1.y referenced above, applies. As part of a future application regarding this project, the Commission expects to hear additional testimony regarding the sedimentation and erosion controls in the area closest to the inland wetlands, and how the disturbance and activities would be kept out of the regulated area.

**Issues Relative to Section 2.1.y.2**

At no point in the public hearing process did anyone present testimony that the Stefanonis propose "...obstructions, whether man-made or natural, of wetlands or watercourses."

**Issues Relative to Section 2.1.y.3**

At no point in the public hearing process did anyone present testimony that the Stefanonis propose “...the location of any portion of any subsurface waste disposal system, including any earth-disturbing activities reasonably associated herewith, within 200 feet of Holly Pond...”.

**Issues Relative to Section 2.1.y.4**

Under 2.1.y.4 (*within 100 feet of Holly Pond or 50 feet from an inland wetland*) Also see 2.1.y.1 above:

A. *Where is the edge of Holly Pond (“Point A”)?*

The EPC finds that the edge of Holly Pond is at elevation 4.3. The information from Mr. MacBroom about the difference between the open waters of the pond and the tidal wetlands as defined by State Statute was informative. The EPC finds that the edge of Holly Pond also extends to the Nearwater Lane storm drain outlet and corresponding channel. There is some uncertainty about whether the channels or ditches or trenches through the tidal wetlands are part of the tidal wetlands or if they are extensions of the Pond—or both. The Commission will want to receive more testimony on this score as part of a formal application. It may be that these ditches or trenches meet the criteria for tidal wetlands because they support, or are capable of supporting the plant life that the open waters of the pond cannot support. Absent direction from a Connecticut Court, the Commission rejects the argument of DLT and other interveners that the Commission can exercise jurisdiction over tidal wetlands concurrent with the State of Connecticut DEP<sup>3</sup>. It is also possible, however, that those ditches or trenches may more appropriately be regarded as part of the Pond, which is a watercourse and consequently within EPC jurisdiction.

B. *Where is the edge of any portion of any structure including any earth-disturbing activities reasonably associated herewith (“Point B”)?*

As noted in the answer to 2.1.y.1 B, the proposed building would be about 57 feet north of inland wetland, and the inland wetlands are at the northern end of the tidal wetlands.

C. *Are Point A and Point B within 100 feet of one another?*

If the channels, ditches, trenches through the tidal wetlands are considered part of the pond, it appears that Point A is approximately 160 feet from Point B. The proposed building would be, by Mr. MacBroom’s estimate, approximately 500 feet from the northernmost edge of Holly Pond. Regardless, the upland review language of 2.1.y confers EPC jurisdiction over this project.

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<sup>3</sup>The EPC reviewed proffered correspondence from the DEP to several other Towns regarding the possibility of overlapping jurisdiction.

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*Other Argument against Jurisdiction*

Many of the Stefanonis' arguments against EPC jurisdiction already have been addressed above. The Stefanonis also assert, however, that EPC review of stormwater discharge into Holly Pond "will set a precedent of having to regulate EVERY new connection to the Darien municipal storm water system and EVERY construction proposal in Darien..." The Commission respectfully disagrees. The sheer magnitude of this project, seeking to increase impervious surface of a previously developed lot by a magnitude of 5-10, resulting in 50-60% of the lot being impervious surface, calls out for EPC review. The Commission's professional staff is fully capable of ensuring that any other such substantial project come first to EPC, so that its review is consistent and in no way arbitrary or capricious. The EPC notes that due to the unique nature of all properties, individual staff review is appropriate.

**I. Decision on EPC Jurisdiction**

The EPC finds that a "Regulated Activity" is being proposed both under Sections 2.1.y (...activity removed from a wetland or watercourse which affects a wetland or watercourse...) and 2.1.y.1 ("...other earth-disturbing activities...within fifty (50) feet of wetlands...) of the Darien Inland Wetland and Watercourses Regulations. Thus, if the Stefanonis wish to proceed with this project, a formal application to the EPC will be necessary.

**II. Response on Referral from Planning and Zoning Commission**

In making this decision, EPC first reviewed the jurisdiction question. The EPC has reached only the threshold question of jurisdiction under Sections 6.1 and 2.1.y. The EPC has not reviewed, and does not have evidence before it, to consider the criteria for a decision on the merits as set out at Section 10 of the Regulations.

No comments on the merits of the referral will be prepared for P&Z, because such comments could be misconstrued as a prejudgment of an application that has yet to be submitted to the EPC. The P&Z should await full EPC review based upon the merits of the application and findings on the criteria in Section 10 of the Regulations. Grading, construction activity, drainage, intensified use of the property and other ecological concerns within EPC purview, may, or may not, have a significant impact. Only until such time as an application is submitted to, and publicly heard, can those merit-based findings be made. For example, only under a fully developed application can EPC determine, under Section 10.2, if a feasible and prudent alternative exists that could attain basic objectives, while enhancing environmental quality or having less of a detrimental effect.

The letters from EPC staff, Nancy Sarner, in 2002, 2003 and 2004 dealt with the best information available at that time and reflected the dimensional jurisdiction of the Commission without any proposed disturbance of the site or development activity. Moreover, these letters in fact explicitly left open the possibility of Holly Pond conferring EPC jurisdiction. Based on the additional information about the inland wetlands, tidal wetlands, Holly Pond, and the natural environment of the area, and the plans and drawings of the proposed site activity, the Commission unanimously concludes that the proposed activity is a regulated activity requiring a permit application.

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Mr. Hillman then had the EPC take a five minute break/recess. The meeting then resumed at 8:40 P.M., and Ms. Cameron joined the meeting. Mr. Hillman read the next agenda item:

**Old Business**

Discussion regarding the Darien High School Project, EPC-49-2001, 80 High School Lane.

Mr. Joe Canas of Tighe & Bond was present to discuss his findings with the EPC. He then gave an update of his recent inspections of the Darien High School property. He said that some improvements are needed around the disturbed area. The rain today caused problems. He will be in touch with the contractor and the Building Committee. He will return to the EPC on February 1.

Mr. Hillman mentioned that due to time constraints, the EPC would not get to the next three agenda items tonight. He said that the Pik matter will be the first item heard on February 1<sup>st</sup>. EPC members agreed that the Stuek and Seitter items will require public hearings, and those will be scheduled for either February 1 or March 1. Mr. Kenyon had some comments about the Seitter matter. Mr. Brendan Jones of Glengate Company was present to briefly respond to those comments. He said that a previous approval for that property showed a pool in the general area, but it was never built. Mr. Kenyon confirmed that he will view the application as fresh. A public hearing will be scheduled.

**New Applications:**

EPC 1-2006, Robert and Pamela Pik, 1 Dew Lane, proposing construction of additions to the residence within the regulated area. The property is on the southeast corner formed by the intersection of Dew Lane and Mansfield Avenue and is shown on Assessor's Map #1 as Lot #43.

EPC 2-2006, Laurie Stuek, 22 Driftway Lane, proposing demolition of the existing residence and construction of a replacement building and modified driveway and related site development activity within a regulated area. The property is located on the east side of Driftway Lane approximately 1300 feet south of Tokeneke Road and is shown on Assessor's Map #66 as Lot #122.

EPC 3-2006, Christopher and Debra Seitter, 459 Mansfield Avenue, proposing to construct a swimming pool within a regulated area. The property is located on the west side of Mansfield Avenue approximately 800 feet north of Half Mile Road and is shown on Assessor's Map #2 as Lot #34-3.

Mr. Hillman confirmed that the following item had been withdrawn:

EPC 103-2005, Wilder G. Gleason, Esq., on behalf of Marilyn D. Hart, 10 Blueberry Lane.  
*THIS ITEM WAS WITHDRAWN ON 1/6/2006.*

Mr. Hillman confirmed that the following item had been continued to February 1:

EPC 89-2005, Mona Tjader Slack, 6 Runkenhage Road, AT APPLICANT'S REQUEST, CONTINUE PUBLIC HEARING ON FEBRUARY 1, 2006 TO COMPILE REQUESTED INFORMATION

At 9:00 P.M., Mr. Hillman read the next agenda item:

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EPC 92-2005, William W. Seymour & Associates on behalf of Kent & Lisa Eppley, 20 Driftway Lane, proposing to construct a two-story garage and perform related site development activities within a regulated area. The subject property is located on the east side of Driftway Lane, approximately 200 feet northeast of its intersection with Tokeneke Road, and is shown on Assessor's Map #66 as Lot #121.

Mr. Jeff McDougal of William W. Seymour & Associates was present to discuss the application. He said that there is no full basement under the house. The two car garage is currently used for storage due to the tightness of the access driveway. Mr. Eppley said that the house was renovated on almost the exact footprint. There is 6,300 square feet of living space with no basement. He then showed photographs of the existing conditions. He said that there is not a usable garage, and the house and living space is above the garage level. The driveway maneuvering is difficult and too tight. Where the garage is proposed, there was a structure long ago. Mr. McDougal confirmed that the proposed garage will be on an already developed area.

Mr. Flaherty said that revised information has been received since the EPC last discussed this. Mr. Eppley proposes to remove 200 square feet of driveway and there is a planting plan from ELS removing some of the lawn area. The existing backup areas of the driveway could be set up as a pervious parking area rather than a solid one. Ms. Kirby said that she was concerned about the amount of water runoff from this impervious surface.

Mr. McDougal said that they considered possibly moving the proposed garage. It would make it a sharper turn, and would need a setback variance from the ZBA. They looked at other options due to the difficulty of backing out. Ms. Judy Slayback of ELS said that she walked the site for alternatives. The site constraints include wetlands, a watercourse, septic area and an upland review area. They have included a sediment and erosion control plan and are removing some impervious surface. They are adding plantings per the revised plan to slow and filter water runoff within the upland review area. They are not causing pollution to the wetlands or watercourses. Mr. Eppley confirmed that he needs to move the garage and parking. The proposed three car garage is 35 feet wide. Mr. Hillman suggested continuing the public hearing on this matter to February 1<sup>st</sup> with a review of alternatives. Ms. Cameron said that in her opinion, the remediation plan is appreciated, but not enough.

At about 9:30 P.M., Mr. Hillman read the next agenda item:

EPC 107-2005, John R. Mastera, Architect, AIA, on behalf of Thomas & Joanne Woodring, 11 Edgehill Drive, Proposing to construct additions and alterations to the existing residence and perform related site development activities within a regulated area. The subject property is located on the south and east sides of Edgehill Drive approximately 450 feet east of its intersection with Searles Road, and is shown on Assessor's Map #67 as Lot #38.

Architect John Mastera was present on behalf of the Woodrings. He said that a new septic system is proposed on the west side of the property near the street. An addition to the house is proposed on the south end of the house. There will be staging and construction access areas outside the wetlands and regulated areas. The area will drain to the east towards the inland wetlands and tidal wetlands. Mr. Flaherty asked if the EPC should look at the reserve septic area as if it will be built, and its impact on wetlands. Ms. Cameron said that there is lots of water across the street side of this site. Lots of water goes into the catch basin in the street. Mr. Mastera responded that if the existing

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septic system fails, they could fix it or they could replace it with a new septic system within the regulated area.

Mr. Flaherty said that the trees are very close to the fill and would probably need to be removed. The addition needs a variance from the Zoning Board of Appeals. Has the health of the existing septic system been investigated? Mr. Mastera said that they are increasing from 14% building coverage to 19.7%, but much of the area is now ledge. Mr. Kenyon said that the space in the attic could easily be converted into another full bath and a bedroom or two, making the use more intense. Mr. Mastera said that they are adding two powder rooms and a master bedroom. He then submitted a copy of the soils report. It was noted that an analysis of alternatives. The public hearing was then continued to February 1, 2006 to allow for further information to be submitted.

At about 9:55 P.M., Mr. Hillman read the next agenda item:

EPC 108-2005 – Tokeneke School Building Committee, 7 Old Farm Road, represented by Metcalf & Eddy, Inc., proposing to demolish the existing elementary school buildings and construct a replacement elementary school with associated grading, athletic fields, and parking areas and to perform related site development activities within a regulated area. The property is located at the southeast corner formed by the intersection of Tokeneke Road and Old Farm Road and is shown on Assessor's Map #65 as Lot #23.

Mr. Flaherty recused himself and left the room due to a potential conflict. Mr. Bruce Hill was present as the Chairman of the Tokeneke School Building Committee, not as an attorney. He said that he had received Ms. Cameron's comments. Mr. Hill noted that this Committee is different than the High School Building Committee, and will avoid the problems encountered by that Committee.

Mr. Gary Simard of Metcalf & Eddy explained that the property is a 12 acre site, which has 2.5 acres of wetlands including a ½ acre pond and Tokeneke Brook. There is an existing building on the south end of the property and wetlands to the east. Much of the existing school is below the flood stage of the Brook, and the proposed school is above this elevation. They will keep the old school buildings in operation while the new building is being constructed. There will be little or no anticipated stockpile of excavated material, no basement in the new building. There will be no building, parking, or site development within the wetlands or its regulated area. The main question is how to accommodate the drainage during construction, while both the new and old school buildings are in place. They looked at various alternatives for drainage detention. There will be a proposed underground gallery in the northeast corner, which will then be used as the contractor's staging area. There will be five rows of stone filled trenches with a 30" pipe down about 5-6 feet. One tiny corner of this will be within the fifty foot regulated area. The curtain drain will catch water from the construction area. Ms. Cameron said that they may need a sump to trap the mud/dirt before it gets into the system so that the area can be cleaned out. Mr. Simard responded that the sumps/basins will need to be inspected weekly and cleaned out as needed.

Mr. Hill said that they are leaving most of the trees along Tokeneke Road. They will be fitting the new parking lot into the landscape of the site, and saving and relocating the existing totem pole. Mr. Simard said that there will be a new bus loop with access from Old Farm Road. It will be built as a permanent facility. The new parking area will have a grit separator in the drainage system. There will be no above ground storm water detention area or rain gardens due to the age of the students and the desire to keep them away from water hazards. Mr. Hill added that they will not be



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eliminating the walking trail through the wetlands. It is still a natural feature valuable to the school and the community. They will be removing the gymnasium and the shed from the regulated area.

New handouts were distributed. Two sheets—figure 1 and Figure 2 were distributed, as well as a four page Stormwater Collection System Design with attachments and a two page January 10, 2006 letter from Turner Construction, and a Tighe & Bond map and comments. Mr. Simard said that there will be a gross particle separator for the first part of the rain storm to trap soil and grit that was on the parking area and the road. They will be addressing drainage problems on the south side of the existing parking lot to avoid an overflow to the neighbor. That parking lot will be eliminated. Due to the late hour, EPC members agreed to continue this public hearing to February 1, 2006.

At about 10:55 P.M., Mr. Hillman read the next agenda item:

EPC 83-2005, McChord Engineering Assoc. Inc., on behalf of Jay Wilderotter, 59 Five Mile River Road, proposing to install walls and landscaping improvements adjacent to the Five Mile River, and perform related site development activities within a regulated area. The subject property is located on the north side of Five Mile River Road, approximately 170 feet east of its intersection with Berry Lane, and is shown on Assessor's Map #66 as Lot #10.

Mr. Wilderotter was present. It was suggested that this application could be withdrawn or denied without prejudice. Mr. Wilderotter explained that he recently bought the 59 Five Mile River Road property from Foster Kaali-Nagy. His wife travels a lot and spends 8-10 days a month at the house. He was represented by Attorney George Reilly at the closing, and there was nothing mentioned by anyone about EPC or changes along the water's edge. The idea was to remove reeds and dead branches and he wanted it cleaned up. He then discovered the old wall made of busted up concrete. He replaced it and extended it with new materials. He said that he now has to remedy the situation, but wants to finish the project and make it look nice. The public hearing was then concluded at 11:20 P.M.

Due to the late hour, Mr. Hillman said that the next two public hearing items will be opened this evening and immediately continued to February 1, 2006:

EPC 105-2005, Wilder G. Gleason, Esq., on behalf of Paul & Diane Reilly, 33 Birch Road for Cherry Lawn Park, Brookside Road, Proposing to implement a remediation plan for Cherry Lawn Park and perform related site development activities within a regulated area. The subject property is located on the west side of Birch Road, approximately 300 feet south of its intersection with Point O Woods Road, and is shown on Assessors Map #11 as Lot #4-5. The property where the activity is proposed to occur is Cherry Lawn Park, located on the east side of Brookside Road, and is shown on Assessors Map #11 as Lot #31.

EPC 106-2005, Wilder G. Gleason, Esq., on behalf of Terrance & Cara Ganser, 9 Windsor Road, Proposing to raze the existing residence and construct a new residence; including removal of an existing patio, and perform related site development activities within a regulated area. The subject property is located on the west side of Windsor Road, approximately 300 feet south of its intersection with Greenleaf Avenue and is shown on Assessors Map #26 as Lot #69.

Mr. Hillman then suggested that EPC could make a decision on the following:

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EPC 83-2005, McChord Engineering Assoc. Inc., on behalf of Jay Wilderotter, 59 Five Mile River Road, proposing to install walls and landscaping improvements adjacent to the Five Mile River, and perform related site development activities within a regulated area. The subject property is located on the north side of Five Mile River Road, approximately 170 feet east of its intersection with Berry Lane, and is shown on Assessor's Map #66 as Lot #10.

EPC members agreed that it would be appropriate to deny this application without prejudice, to allow Mr. Wilderotter to work with DEP on appropriate remediation for the problem. A motion to that effect was made by Mr. Hillman, and seconded by Mr. Kenyon and unanimously approved.

Mr. Hillman then read the next agenda item:

EPC 91-2005, JJ Boca Land Development, 473 Hollow Tree Ridge Road, proposing to construct new residence, add buffer planting area and perform related site development activities within a regulated area. The subject property is located on the west side of Hollow Tree Ridge Road approximately 300 feet north of its intersection with Christie Hill Road, and is shown on Assessor's Map #8 as Lot #31. PUBLIC HEARING WAS CONCLUDED ON DECEMBER 7, 2005

A motion was made by Ms. Cameron to approve the project and adopt the findings and conditions as written. That motion was seconded by Mr. Hillman and unanimously approved. The adopted findings and conditions are as follows:

FINDINGS AND CONDITIONS REGARDING  
ENVIRONMENTAL PROTECTION COMMISSION APPLICATION  
EPC #91-2005  
J.J. BOCA LAND DEVELOPMENT 473 HOLLOW TREE RIDGE ROAD  
JANUARY 18, 2006

On October 11, 2005, an application was submitted to the Environmental Protection Commission to construct a replacement residence at 473 Hollow Tree Ridge Road. The proposed residence and site development activity would be within the 50 foot regulated area surrounding the wetlands located to the rear of the site. At the November meeting, the EPC discussed the application and expressed concerns about the extent of development activity within the regulated area. They scheduled a Public Hearing to be conducted on December 7, 2005.

Revised plans were submitted prior to the public hearing to reduce the amount of activity within the regulated area, to pull the proposed structures farther from the wetlands, to provide a fence and better landscaping buffer to separate the yard and lawn from the wetlands, to more properly manage the storm water runoff, and to address the other concerns previously expressed by the Commission.

When the Commission conducted the public hearing on December 7, 2005, several neighbors expressed their concerns regarding the size of the proposed residence, its closeness to the street, trees to be removed, the storm water runoff, and other aspects of the proposal. Those matters were discussed and addressed. The Commission concluded that the revised plans, dated 11-22-05, would have no unreasonable adverse impacts on environmental features on the site and would not unreasonably encroach upon the environmentally sensitive areas and were acceptable and in keeping with the spirit of the wetlands' protection regulations.

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The Commission hereby approves the revised plans (submitted 11-22-05), with respect to the proposed construction of a replacement residence and redevelopment of the site subject to the following conditions and stipulations:

1. Development and construction shall be in accordance with the revised plans prepared by Grumman Engineering, LLC entitled "J.J. Boca Land Development 473 Hollow Tree Ridge Rd Darien, Connecticut Proposed Residence Site Plan" Sheet 1 of 1 dated 10-06-05 and revised most recently on 11-22-05. The rest of the development plans were prepared by Masciarelli Architects and include – Drawings 1 – 8 all dated 08-31-05
2. Prior to the issuance of the Zoning Permit for the residence above the foundation level, the applicant shall complete the wetlands mitigation work, installation of the wetlands buffer planting and the placement of the fence to separate the grass lawn from the mitigation planting area, and installation of the silt fence to prevent activity and/or impact to the wetlands. Frequently wetlands restoration work is postponed until the end of the construction project, but in this case, since there will be no construction activity allowed in or close to the wetlands and since the access to the wetlands will be more difficult once the regrading and building have been completed, it is appropriate and required that all of the wetlands mitigation/restoration work be completed before the Zoning Permit is issued for the work above the foundation level on the proposed residence.
3. Once the wetland mitigation work, placement of the fences and the planting of the vegetation in and adjacent to the wetlands has been completed, the applicant shall provide written certification from the environmental consultant verifying that the work has been completed in accordance with the plans approved as part of this Permit.
4. Once the foundations for the house has been installed, the applicant shall submit an updated As-Built survey map prepared by a licensed land surveyor to verify that the construction activity complies with the plans submitted as part of this Permit. A similar As-Built map shall be required to verify that the regrading of the site and the storm water management system has been installed are in compliance with the approved plans and that no filling or regrading is closer to the wetlands than approved herein. The As-built survey of the developed conditions is required prior to issuance of a Certificate of Zoning Compliance and/or use of the structure.
5. This Permit is valid for five years, until January 18, 2011, but once the work adjacent to the wetlands has been started, that work must be completed and the area must be re-stabilized to prevent further erosion within one year of the commencement of activity.
6. During the construction work, sediment and erosion controls shall be installed and maintained to avoid the discharge of sediment and eroded material into the adjacent wooded area and/or wetland area or watercourses.
7. The Permittee shall notify the Environmental Protection Commission prior to the commencement of work activity and once the erosion controls have been established. The Commission staff shall inspect the erosion controls to make sure that they are sufficient and as per the site conditions. All sediment and erosion control measures must be maintained until all disturbed areas are stabilized and re-vegetated.
8. The work activity is limited to that which is shown on the submitted and approved plans. Any requested modifications or changes need to be submitted to the Commission for further review and action.
9. No equipment or materials, including without limitation, fill, construction materials, debris, or other items may be deposited, placed, or stored in any wetland, watercourse, or the regulated setback around the wetlands and watercourses.

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10. The Commission has based its action on the representations made by the applicant and their representative and the plans and materials submitted to the Commission. If for any reason, the plans or representations are false, deceptive, misleading, or inaccurate, the Commission reserves the right to void the Permit. Such action shall not be taken by the Commission unless and until a public hearing is conducted at which time the applicant shall be given the opportunity to explain the situation.
11. The Permit does not relieve the applicant of their responsibility to comply with all other applicable rules, regulations, and codes of other town agencies or other regulating agencies. In particular, the applicant must satisfy the Health Department that the septic system will not be impacted by the proposed construction, and that the necessary Zoning and Building Permits must be obtained.
12. This Permit is not transferable without written approval from the Environmental Protection Commission. The person to whom the Permit is to be transferred must confirm in writing to the Commission that they are fully aware of the responsibilities involved in the implementation of the Permit and that they will be the person responsible for the proper use of the Permit.

There being no other business, the meeting was then adjourned at 11:30 P.M.

Respectfully Submitted,

David J. Keating  
Assistant Director of Planning & Zoning

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